

03 - 23094  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CIV - HUCK

RICHARD DELEON

Plaintiff,

CIV. ACTION:

vs.

COMPLAINT FOR  
PATENT INFRINGEMENT

HOME PRODUCTS INTERNATIONAL  
INC.; KMART Corporation;  
and JOHN DOES 1-10

Defendants

MAGISTRATE JUDGE  
TURNOFF



PLAINTIFF, RICHARD DELEON, sues DEFENDANT, HOME PRODUCTS

INTERNATIONAL, INC., KMART CORPORATION; and JOHN DOES 1-10 and states as follows:

**JURISDICTION AND VENUE**

1. This is an action for injunctive and other relief under the Federal Patent Act, 35 U.S.C. Section 101, *et seq.* for design patent infringement.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. 1331 and 1338(a).

3. Venue is proper under 28 U.S.C. 1400(b), 28 U.S.C. 1391(b) and 1391 (c)

in that the wrongful acts committed by Defendant occurred in or originated from the Southern District of Florida.

4. Plaintiff, RICHARD DELEON, is an individual residing in Miami-Dade County, Florida.

5. Defendant, HOME PRODUCTS INTERNATIONAL, INC. (hereinafter HPI), is a corporation which manufactures a combined toothbrush and toothpaste holder (hereinafter "Holder") which is sold in the Southern District of Florida and is the subject of this litigation. This product was produced sometime beginning in 2002. A copy of the Holder is attached as EX. A.

6. Defendant- KMART CORPORATION and JOHN DOES 1-10 are retailers who have stores in the Southern District of Florida which sell and/or offer for sale the Holder.

7. Plaintiff developed a unique and ornamental design for a combined toothpaste pump and



toothbrush holder.

8. Plaintiff applied for a U.S. Patent for said design which resulted in the issuance of U.S. Patent No. Des. 306,811 ("the 811 patent") duly and properly to Plaintiff in 1990. Exhibit B.

9. Long since the issuance of the 811 patent, Defendant-HPI commenced the manufacture, distribution in commerce, and/or sale of the Holder which is substantially similar and confusingly similar to Plaintiff's design appearing in the 811 patent.

10. Defendant-HPI's Holder is so similar to the design appearing in the 811 patent that an ordinary consumer, seeing the Holder and the 811 patent for the first time, would purchase one believing it to be the other.

11. The use by Defendant-HPI of the design of its Holder is without the consent, license, or permission of Plaintiff.

12. All Defendants have infringed and are now infringing the claims of the 811 patent by making, using, and/or selling the Holder.

13. All Defendants' aforesaid acts constitute infringement of the 811 Patent in violation of the Patent Act, 35 U.S.C. 271.

14. Defendants' aforesaid acts have caused and will cause great and irreparable injury to Plaintiff, and unless said acts are restrained by this Court, Plaintiff will continue to suffer great and irreparable injury.

15. Plaintiff has no adequate remedy at law.

**WHEREFORE**, Plaintiff prays that:

a. This Court will adjudge that the 811 patent has been infringed as a direct and proximate result of the acts of Defendants as set forth in this Complaint in violation of Plaintiff's rights under the Patent Act, 35 U.S.C. 3101, *et seq.*

b. All Defendants, and all officers, directors, agents, servants, employees, attorneys, successors, and assigns, and all persons in active concert or participation therewith, be preliminarily and permanently enjoined and restrained from using any design substantially similar or confusingly similar to the design shown in the 811 patent;

c. All Defendants be required to deliver up for destruction all Holders in their possession or control which infringe on the 811 patent.

d. All Defendants be directed to file with this Court and to serve upon Plaintiff within thirty (30) days after service of the injunction issued in this action, a written report under oath, under oath, setting forth in detail the manner of compliance with the above.

e. Plaintiff recover all of Defendants' profits arising from all of Defendants' acts of patent infringement and that the Court enter judgment, in addition to the amount of the recovery based on profits or damages, for such sum as the Court shall find to be just, and in addition to the amount of actual damages found, such sums shall be in an amount three (3) times the amount of the actual damages found.

g. Plaintiff have and recover, pursuant to the laws of the State of Florida, in addition to his actual damages, punitive damages in an amount which the Court deems just and proper.

h. Plaintiff have and recover both prejudgment and post-judgment interest on each and every damage award.

i. Plaintiff have and recover his reasonable attorney's fees incurred in this action.

j. Plaintiff have and recover its taxable costs and disbursements herein.

k. Plaintiff have other and such further relief as the Court may deem just and proper.

### **JURY DEMAND**

Plaintiff demands a jury trial on all triable issues herein.

Dated: November 20, 2003

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GREGG GOLDFARB, ESQ.  
Attorney for Plaintiff  
Fla. Bar No.: 0987123  
19 West Flagler Street  
Miami, Florida 33130  
Tel.: 305.371.2538  
Fax: 305.539.9432



EX. A

United States Patent [19]  
DeLeon

[11] Patent Number: Des. 306,811  
[43] Date of Patent: .. Mar. 27, 1990

[54] COMBINED TOOTHPASTE PUMP AND  
TOOTHBRUSH HOLDER

D. 134,464 7/1949 Day ..... D6/531  
D. 239,799 3/1976 Fontana ..... D6/531  
D. 278,586 4/1983 Thompson ..... D6/531

[76] Inventor: Richard A. DeLeon, 17120 SW. 94  
Ave., #402, Miami, Fla. 33157

Primary Examiner—Wallace R. Burke  
Assistant Examiner—Brian N. Vinson  
Attorney, Agent, or Firm—Malin, Haley & McHale

[\*\*] Term: 14 Years

[57] CLAIM

[21] Appl. No.: 932,482

The ornamental design for a combined toothpaste pump  
and toothbrush holder, as shown and described.

[22] Filed: Nov. 18, 1986

[32] U.S. CL. .... D6/531; D6/524;  
D6/527

[38] Field of Search ..... D6/524, 527-528,  
D6/531, 534-535; 211/118-119, 112-113, 13,  
60.1, 65-66, 74-75, 86-87; 248/110, 311.2,  
312.1

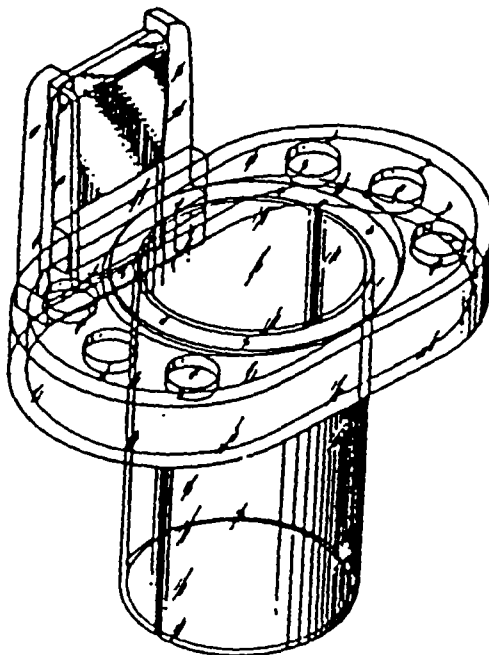
# DESCRIPTION

FIG. 1 is a top plan view of a combined toothpaste pump  
and toothbrush holder showing my new design;  
FIG. 2 is a right side elevation view thereof, with the  
left side being a mirror image;  
FIG. 3 is a rear elevational view thereof;  
FIG. 4 is a front elevational view thereof;  
FIG. 5 is a bottom plan view thereof; and  
FIG. 6 is a perspective view thereof.

[56] References Cited

## U.S. PATENT DOCUMENTS

D. 62,389 5/1923 Balmer ..... D6/531



EX. B

U.S. Patent

Mar. 27, 1990

Sheet 1 of 2

D306,811

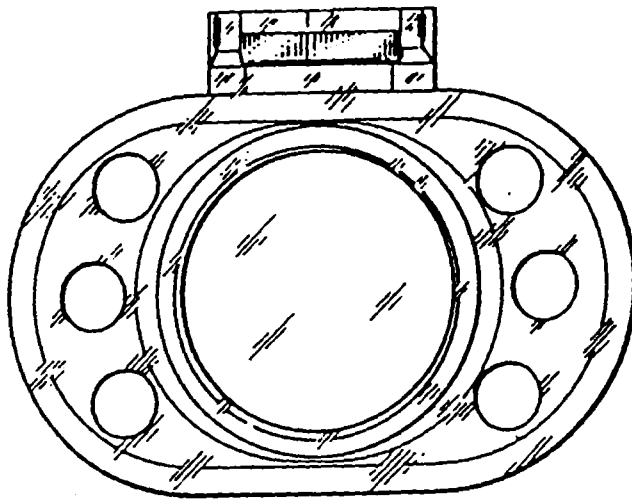


FIG. 1

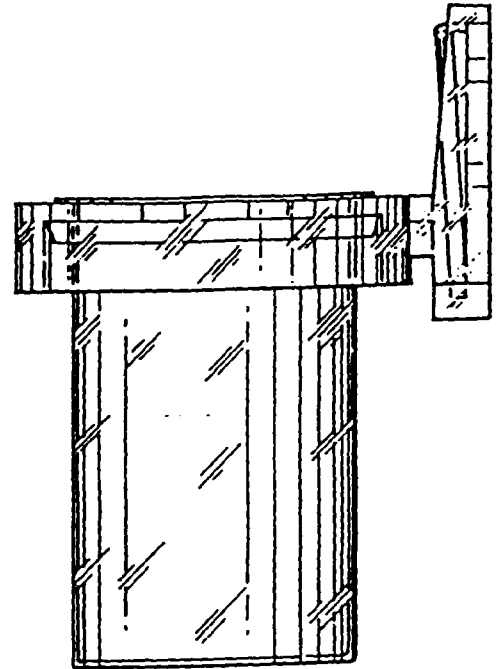


FIG. 2

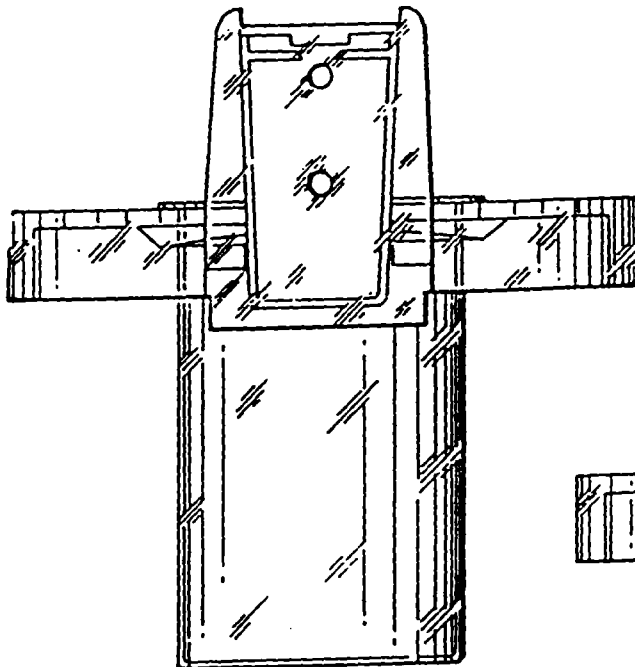


FIG. 3

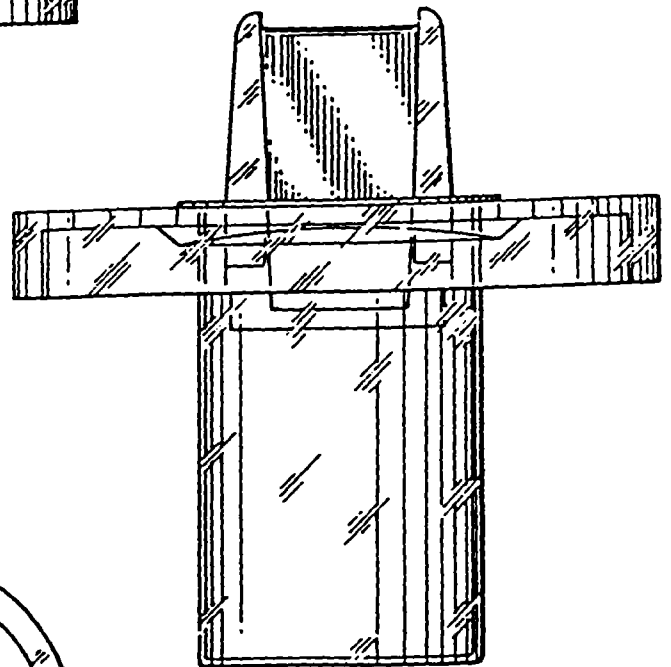


FIG. 4

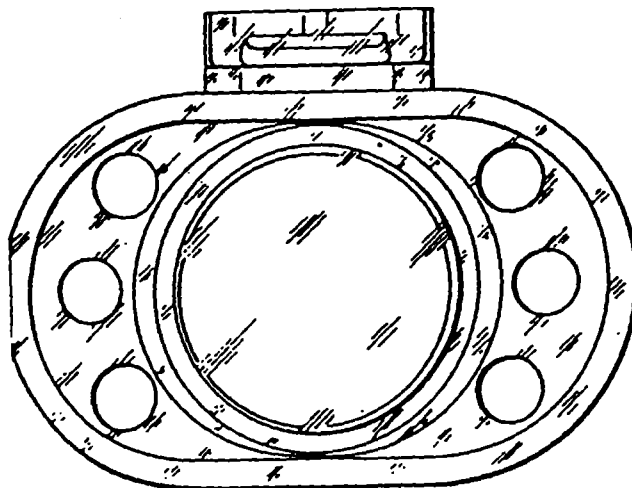


FIG. 5

U.S. Patent

Mar. 27, 1990

Sheet 2 of 2

D306,811

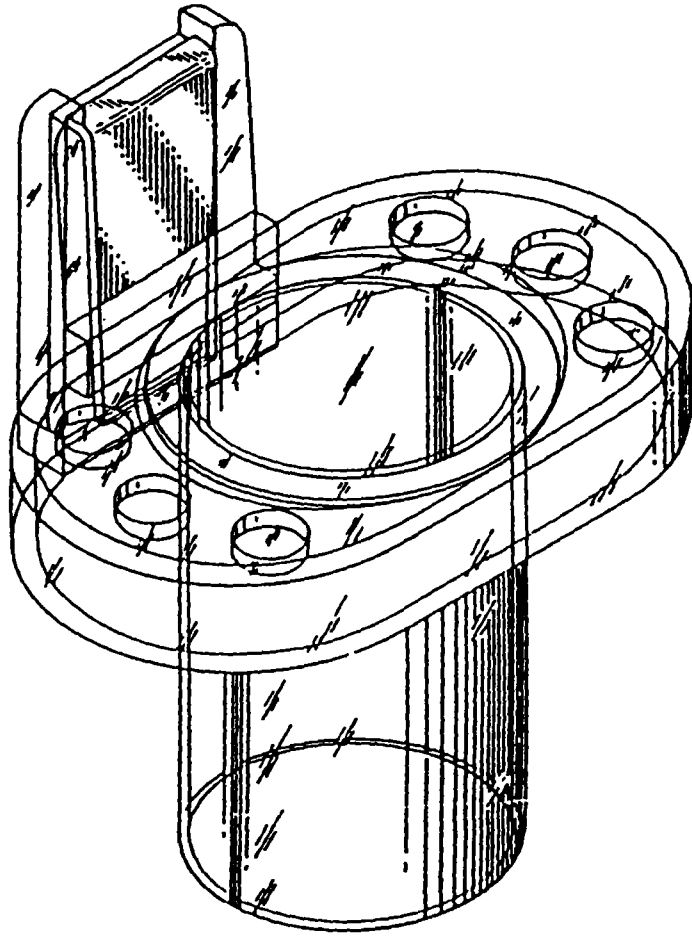


FIG. 6

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Richard Delcon

## DEFENDANTS

Home Products International  
CIV-HUCK Knauf Corporation

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(EXCEPT IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

(d) CIRCLE COUNTY WHERE ACTION AROSE: DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKECHOBEE HIGHLANDS

## II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- ☐ 1 U.S. Government Plaintiff  
☒ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

- | PTF                        | DEF                        | PTF                        | DEF                        |
|----------------------------|----------------------------|----------------------------|----------------------------|
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
- Citizen of This State  
Citizen of Another State  
Citizen or Subject of a Foreign Country  
Incorporated or Principal Place of Business in This State  
Incorporated and Principal Place of Business in Another State  
Foreign Nation

## IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT	A TORTS	FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input checked="" type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>A PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>B SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions A OR B
<b>A REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input checked="" type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>A CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>A LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

## VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

35 U.S.C. § 101

LENGTH OF TRIAL

via 4 days estimated (for both sides to try entire case)

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE